

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

DOUGLAS MCKINLEY, II, et al.,

| No. 1:21-cv-00754-NONE-SAB

Plaintiffs,

**ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS IN PART AND
DENYING APPLICATION TO PROCEED
*IN FORMA PAUPERIS***

COUNTY OF FRESNO, et al.,

(Doc. Nos. 2, 4)

Defendants.

TWENTY-ONE DAY DEADLINE

17 Plaintiffs Douglas McKinley, II, and Joanna McKinley filed the complaint commencing
18 this action on May 10, 2021. (Doc. No. 1.) Along with the complaint, one of the plaintiffs filed
19 an application to proceed *in forma pauperis* in this action.¹ The matter was referred to a United
20 States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

21 On June 10, 2021, the assigned magistrate judge issued findings and recommendations,
22 recommending that the application to proceed *in forma pauperis* be denied. (Doc. No. 4.) The
23 findings and recommendations were served on plaintiffs and contained notice that any
24 objections to thereto were to be filed within twenty-one (21) days from the date of service. (*Id.*
25 at 3–4.) The period for filing objections has passed and no objections have been filed.

26 Although the magistrate judge indicated that it was Douglas McKinley who filed the
27 application, a comparison of the signatures in the complaint against the signature in the
28 application suggests it may have been Joanna McKinley who signed the application. (*Compare*
Doc. No. 1 at 6 with Doc. No. 2 at 2)

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted
2 a *de novo* review of this case. “To satisfy the requirements of 28 U.S.C. § 1915, applicants
3 must demonstrate that because of poverty, they cannot meet court costs and still provide
4 themselves, and any dependents, with the necessities of life.” *Soldani v. Comm’r of Soc. Sec.*,
5 Case No. 1:19-cv-00040-JLT, 2019 WL 2160380, at *1 (E.D. Cal. Jan. 31, 2019). Many courts
6 look to the federal poverty guidelines set by the United States Department of Health and Human
7 Services as a guidepost in evaluating *in forma pauperis* applications. *See Martinez v. Kristi
Kleaners, Inc.*, 364 F.3d 1305, 1307 n.5 (11th Cir. 2004); *Boulas v. United States Postal Serv.*,
9 No. 1:18-cv-01163-LJO-BAM, 2018 WL 6615075, at *1 (E.D. Cal. Nov. 1, 2018) (applying
10 federal poverty guidelines to *in forma pauperis* application). However, the poverty guidelines
11 should not be considered in a vacuum; rather, courts are to consider income in the context of
12 overall expenses and other factors, including savings and debts. *See, e.g., Boulas*, 2018 WL
13 6615075, at *1 n.1 (denying *in forma pauperis* where income exceeded expenses); *Lintz v.
Donahoe*, No. 2:14-CV-0224-JAM-DAD, 2014 WL 1338782, at *1 (E.D. Cal. Apr. 2, 2014)
15 (recommending denial of *in forma pauperis* status where plaintiff had \$3,000 in savings even
16 though expenses exceeded income). Where the applicant’s income exceeds expenses by a
17 notable amount, it may be appropriate to deny *in forma pauperis* status. *Lopez-Ruiz v. Tripler
Army Med. Ctr.’s Postdoctoral Fellowship in Clinical Psychology*, No. CV. 11-0066
18 JMS/BMK, 2011 WL 486952, at *1 (D. Haw. Feb. 4, 2011) (denying *in forma pauperis* status
20 where the applicant’s income was \$21,600, with possibly one dependent, which was above the
21 relevant federal poverty guideline of \$16,760, and the applicant’s income exceeded their
22 monthly expenses).

23 Here, two plaintiffs signed the complaint: Joanna McKinley and Douglas McKinley, II.
24 (Doc. No. 1 at 6.)² However, there is only one application to proceed *in forma pauperis* before
25 the court. (Doc. No. 2.) The application states that the filer has \$1,466 in biweekly take-home
26

27 ² As the magistrate judge noted in a previous order (Doc. No. 3 at 2 n.1), because plaintiffs are
28 proceeding *pro se*, they cannot represent their children without retaining counsel. If this
complaint proceeds, plaintiffs’ children will not be parties to the lawsuit without a lawyer.

1 pay. (*Id.* at 1.) Annualized over a 52-week year, that amounts to \$38,116 annual income.³ As
2 the findings and recommendations indicate, this income is substantially greater than the poverty
3 threshold for a household of two under the 2021 Poverty Guidelines for the 48 contiguous
4 states, *2021 Poverty Guidelines*, <https://aspe.hhs.gov/poverty-guidelines> (last visited July 13,
5 2021) (\$17,420 threshold).

6 In addition, the application is incomplete. First, only one plaintiff has filed the
7 application. Both plaintiffs must provide the information to the court. Second, it does not
8 indicate whether either plaintiff has received any other income in the last twelve months. Third,
9 the application also does not clearly show whether plaintiffs have any debt or other obligations
10 that offset the income. Thus, the court is unable to determine the extent to which the reported
11 income is offset by expenses or debts.

12 Plaintiffs were informed by the magistrate judge on May 12, 2021, that they should both
13 submit long form applications to proceed *in forma pauperis* and warned them that if they were
14 unwilling to do so, they would be required to pay the required filing fee. (Doc. No. 3 at 2.) As
15 a result, based on the information before it, the court concludes that the magistrate judge's
16 recommendation to deny the application is generally supported by the record and by proper
17 analysis. That recommendation will be adopted with the modification that the denial shall be
18 without prejudice to plaintiffs renewing their application by both filing complete long form
19 applications to proceed *in forma pauperis*.

20 Accordingly, IT IS HEREBY ORDERED that:

21 1. The findings and recommendations, filed June 10, 2021 (Doc. No. 4), are
22 ADOPTED IN PART;

23 2. Plaintiff Joanna McKinley's application to proceed *in forma pauperis*, filed May
24 10, 2021 (Doc. No. 2), is DENIED, WITHOUT PREJUDICE;

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27 ³ The court notes that the findings and recommendations slightly underestimated plaintiff's
28 annual income by multiplying plaintiff's bi-weekly pay by 24 instead of 26.

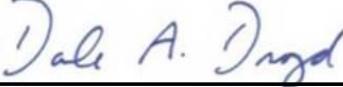
1 3. The clerk of court shall send to plaintiffs two copies of the long-form application
2 to proceed *in forma pauperis*;

3 4. Within **twenty-one (21) days** of the date of entry of this order, plaintiffs shall
4 either (1) pay the **four hundred and two dollar (\$402.00)** filing fee in this matter
5 or (2) each file a long-form application to proceed *in forma pauperis*; and

6 5. **If plaintiffs fail to comply with this order, this matter shall be dismissed for**
7 **the failure to pay the filing fee.**

8
9 IT IS SO ORDERED.

10 Dated: July 14, 2021



UNITED STATES DISTRICT JUDGE